

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MAC EAST, LLC,)
Plaintiff,)
v.)
SHONEY'S, INC.,)
Defendant.)
CASE NO. 2:05-cv-1038-MEF

ORDER

This cause is before the Court on the Limited Remand Order of the United States Court of Appeals for the Eleventh Circuit (Doc. # 52) and the parties' Stipulation of Facts and Joint Motion to Continue. (Doc. # 54).

On October 28, 2005, Defendant removed the case to this Court. (Doc. # 1). On January 8, 2007, the Court granted Plaintiff's Motion for Partial Summary Judgment and denied Defendant's Motion for Summary Judgment. (Doc. # 40). On February 20, 2007, the Court conducted an evidentiary hearing regarding damages, and on March 2, 2007, the Court entered a Final Judgment in favor of Plaintiff in the amount of \$78,732.28. (Doc. # 46).

On March 26, 2007, Defendant filed a Notice of Appeal under the diversity of jurisdiction statute, 28 U.S.C. § 1332. (Doc. # 49). On March 14, 2008, the Court of Appeals remanded the case for the limited purpose of determining whether diversity of citizenship exists. (Doc. # 52).

Both parties are limited liability companies ("LLCs"). An LLC, like a partnership, "is a citizen of any state of which a member of the company is a citizen." *Rolling Greens MHP, L. P. v. Comcast SCH Holdings, L. L. C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). "Jurisdictional facts are assessed on the basis of plaintiff's complaint as of the time of removal." *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1097 n.13 (11th Cir. 1994) (emphasis omitted).

On the date that Defendant removed this case, Plaintiff had six members, five of whom were citizens of Alabama and one of whom was a citizen of Washington, D.C. Defendant had one member, Shoney's Holding Company, a Delaware corporation. Therefore, diversity of jurisdiction existed at the time of removal.

Accordingly, it is hereby ORDERED as follows:

- (1) The parties' Motion for Continuance (Doc. # 54) is GRANTED. The Status Conference set for June 11, 2008 is CANCELLED.
- (2) The Court accepts the joint stipulation of facts and finds that it has subject matter jurisdiction. The Court reaffirms the Final Judgment in favor of Plaintiff in the amount of \$78,732.28. (Doc. # 46).

Done this the 10th day of June, 2008.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE